IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 938 OF 2004

IN

SUMMARY SUIT NO. 2123 OF 2004

ASHISH SOMNATH SARASWAT ... PLAINTIFF

VS.

CLUB MILLENNIUM & Ors. ... DEFENDANTS

Mr. Yashpal jain for the Plaintiff.

Mr.Birendra Saraf i/b. Lilani Shah for Defendants.

CORAM: S.U.KAMDAR,J.

DATE : 11th October,2005.

P.C.

1. The learned Counsel appearing for the plaintiff makes a statement that he is deleting defendants Nos. 3 to 6 as parties to the present suit. Leave granted. Amendment to be carried out within one week from today.

2. The learned Counsel appearing for the plaintiff makes a further statement that the plaintiff gives up claim for interest. The said statement is accepted.

3. Insofar as the principal amount is concerned, the

amount arises out of various invoices which are issued

from time to time and the claim is around Rs.2,34,993/-. The defence of the defendants is that the claim is barred by limitation because invoices are dated 10.6.2001 onwards, whereas the suit is filed on 28.6.2004. However, my attention is drawn to clause (E) of the purchase order at Exhibit "A" to the plaint which, inter alia, provides for 30 days period. It has been contended by the defendants that the same does not amount to 30 days credit period. The clause clearly specifies that payments of bill will be made in accodance with the normal practice of the defendant within 30 days from receipt of the bill. Thus the same amounts to credit period. Considering the 30 days from the date of receipt of the bill, the present suit is within time. Insofar as the defence pertaining to the quality is concerned, I do not find any merits whatsoever . The plaintiff supplied cutlery items and the defence raised is cutlery items are not in accordance with the specifications. The defence raised is also belated.

4. I find no merits in the defence. However, with a view to give an opportunity to the defendants to defend the suit, I direct the defendants to deposit Rs.2,30,000/- in this Court within a period of four weeks from today, failing which the plaintiff will be

entitled to decree. The amount if so deposited, the Prothonotary & Senior Master is directed to deposit the same in a fixed deposit with any Nationalised Bank initially for a period of one year and renew the same fromtime to time till further orders from this Court.

5. Suit transferred to the list of Commercial Causes. Written Statement or points of defence to be filed within four weeks from the date of deposit. Affidavits of documents to be filed within four weeks thereater. Inspection within four weeks thereafter. Suit to be on Board of the learned Judge taking Commercial Causes.

(S.U.KAMDAR,J.)